

Ash Grove Cement v. Jefferson County and the State of Montana, et al.
Cause No. DV-06-10516, Mont. 5th Judic. Distr. Ct., Jefferson County, MT
Proposed Settlement Agreement

This action was brought by Ash Grove Cement Company to declare the legal status of the Microwave Hill Road and to seek damages for Jefferson County's assertion that it was a county road. This road runs across Ash Grove's land, and was originally thought to provide some right of access to State lands in the E½W½ of Section 12, Twp. 9 North, Range 3 West, MPM. The Department's legal staff, as well as outside counsel have reviewed the facts in this case and concluded that no right of legal access exists to the State parcel. The Department therefore recommends that the Board approve the terms of the attached proposed Settlement whereby: all parties receive a release of liability; Jefferson County admits that the Microwave Hill Road is not a county road; and the State and Ash Grove Cement exchange reciprocal easements, so the State may obtain a right of legal access to these trust lands.

Tommy H. Butler
Special Assistant Attorney General
Montana Department of Natural
Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-3776

MONTANA FIFTH JUDICIAL DISTRICT COURT, JEFFERSON COUNTY

* * * * *

ASH GROVE CEMENT COMPANY, a)	
Delaware corporation registered and)	Cause No. DV-06-10516
doing business in Montana,)	
)	
Petitioner,)	SETTLEMENT AGREEMENT
)	AND RELEASE
-vs-)	
)	
JEFFERSON COUNTY, a Political)	
Subdivision of the State of Montana;)	
and THE STATE OF MONTANA;)	
and AT&T and/or AMERICAN)	
TOWERS, INC., a Delaware)	
Corporation doing business in)	
Montana; and Garry D. and)	
Dawn D. Wheelock; and Charles)	
M. and Paula Holland,)	
)	
Respondents.)	
_____)	

Plaintiff, Ash Grove Cement Company, and the Montana Department of Natural
Resources and Conservation hereby agree as follows:

1. The State shall grant to Ash Grove Cement a non-exclusive easement for ingress
and egress to Ash Grove Cement's land in the E½ of Section 12, Township 9
North, Range 3 West, MPM, across the State's property located within the East
half of the West half of Section 12, Township 9 North, Range 3 West MPM in

- Jefferson County, Montana. A copy of such easement is attached hereto as exhibit "A";
2. The State shall grant Ash Grove Cement an easement for lawful fumes, dust, vibration, and noise upon the above-described state property, by which it acknowledges the existing use of Ash Grove's property, and agrees not to object to Ash Grove's lawful conduct of its industrial operations conducted upon adjacent Ash Grove property;
 3. Ash Grove Cement shall grant the State of Montana, State Board of Land Commissioners a non-exclusive easement for ingress and egress to the State's land in the East half of the West half of Section 12, Township 9 North, Range 3 West, M.P.M., across Ash Grove's property located within the West half of the West half of Section 12, Township 9 North, Range 3 West, M.P.M. The State's use of such easement shall be conditioned to provide access for only a single family dwelling and associated outbuildings, as it is currently zoned. A copy of such easement is attached hereto as exhibit "B";
 4. Since this Settlement Agreement will result in a change to the quality of the State's title, allowing lawful conditioned access to the State' property, the State agrees that if it should sell the above-described state property, it will, prior to the State Land Board's preliminary approval of the sale, submit to the State Board of Land Commissioners, an independent third-party appraisal of the value of the property to be sold, reviewing the new quality of title, along with an appraisal prepared or adopted by the Montana Department of Natural Resources and Conservation;

5. The Defendant, State of Montana, State Board of Land Commissioners, Montana Department of Natural Resources and Conservation, Plaintiff, Ash Grove Cement Company, and Defendant, Jefferson County hereby release, acquit, and forever discharge each other, as well as their officers, agents, employees, representatives, and owners finally and completely, from: any and all actions, causes of actions and claims, know or unknown, arising out of or in any way related to the above-captioned matter; and any matters which were, or could have been, brought regarding the actions of the Jefferson County Commissioners relating to the real property at issue; as well as the existence or non-existence of public roads, easements, or prescriptive rights running across the real property at issue in the above-captioned matter.
6. Respondent, Jefferson County acknowledges the above-referenced easement road described in the above-referenced exhibits "A" and "B" easements is not a County road.
7. This Settlement Agreement and Release constitutes the entire agreement between the subscribing parties, and its provisions are contractual in nature and not merely recitals.
8. This Settlement Agreement and Release shall not be treated an admission of liability at any time on the part of any party executing this agreement
9. This Settlement Agreement and Release shall constitute the consideration for the dismissal of the above-captioned action and may be enforced by a court using any appropriate remedy allowed by law or by equity.

10. The right, title and interest of Respondents AMERICAN TOWERS, INC. and AT&T, in access to their property via Microwave Hill Road is not affected by this case.

11. After the above-described easements (exhibits "A" and "B") have been received by the respective Grantees, Plaintiff Ash Grove Cement shall request that the Court dismiss the above-captioned action with prejudice.

DATED this ____ day of _____, 2006.

Defendant Jefferson County

By: _____
Matthew Johnson
Jefferson County Attorney

Plaintiff, Ash Grove Cement Company

By: _____
Chris A. Johnson

Defendant, State of Montana, State Board of Land Commissioners and Montana Department of Natural Resources and Conservation

By: _____
Tommy H. Butler
Special Assistant Attorney General

Respondent, American Towers

By: _____
John H. Grant

Respondent, AT&T

By: _____
W. Scott Mitchell

After Recording Return To:
Sullivan, Tabaracci & Rhoades, P.C.
Chris Johnson
1821 South Ave. West, 3rd Floor
Missoula, MT 59801

GRANT OF ROADWAY ACCESS EASEMENT

WHEREAS the State of Montana, by and through the Montana Board of Land Commissioners, is the owner, in trust for common public schools, of a parcel of land described as the East half of the West half of Section 12, Township 9 North, Range 3 West, P.M.M., situated in Jefferson County, Montana (hereinafter referred to as the dominant tenement); and

WHEREAS litigation has arisen between Ash Grove Cement and the State of Montana, by and through the Montana Board of Land Commissioners, and the Montana Department of Natural Resources and Conservation in the action styled Ash Grove Cement Company v. Jefferson County et. al., Cause No. DV-06-10516 (Mont. Fifth Judicial District Court, Jefferson County); and

WHEREAS the parties to the above-referenced lawsuit have agreed, in order to avoid needless litigation and to promote certainty in their relations, to resolve the same on the terms and conditions set forth in that certain Settlement Agreement approved by the Court on [DATE], the material terms of which are incorporated herein by this reference; and

WHEREAS the Settlement Agreement requires the Plaintiff, Ash Grove Cement Company, and the Defendant State of Montana, to grant reciprocal access easements to one another to allow access to their respective parcels, subject to the terms and conditions as described herein;

NOW THEREFORE in consideration of the mutual promises contained in the Settlement Agreement, and other good and valuable consideration, the above-described Grantor hereby grants to the Grantee and its successors and assigns, and the Grantee hereby accepts, a non-exclusive access easement, for ingress and egress to the Grantee's above-described property, pursuant to the following terms and conditions, as set forth herein:

1. Parties

Ash Grove Cement Company, a corporation licensed and doing business in Montana, of 100 Montana Highway 518, Clancy, Montana, 59634, is hereinafter referred to as "the Grantor". The State of Montana, State Board of Land Commissioners, by and through the Department of Natural Resources and Conservation, of P.O. Box 201601, Helena, MT 59620-1601, is hereinafter referred to as "the Grantee".

2. Ownership of Servient and Dominant Tenements

The Grantor owns and has some right, title, and interest, both legal and equitable, in the real estate described generally as being the West ½ of the West ½ of Section 12, Township 9 North, Range 3 West, P.M.M., situate in Jefferson County, Montana, (hereinafter referred to as the "servient tenement"), excepting therefrom approximately 6 acres as noted on the Certificate of Survey referenced below. The Grantee owns and has some right, title, and interest, both legal and equitable, in the dominant tenement, which is located within the East half of the West half of Section 12, Township 9 North, Range 3 West, P.M.M., to the East of Grantor's above-described property.

3. Purpose

The purpose of creating and granting the Roadway Easement described below is to permit the Grantee ingress and egress its property, and as limitation on the scope of this easement, the ingress and egress provided for herein shall be to service one single-family habitable dwelling, with related outbuildings. The parties acknowledge this easement is given in conjunction with, and subject to, those existing and recorded grants of easement or right of way to American Telephone and Telegraph Company, in which Grantor's predecessor in interest and Grantee provided access to the AT&T tower site located in the Northeast ¼ of said Section 12. The parties further acknowledge existing easement rights previously granted by Grantor to property owners of the two parcels located in the North ½ of Grantor's above-described property. Nothing contained herein shall be construed as a limitation of the rights granted in those prior instruments.

4. Duration

The Easement created and granted herein shall be perpetual, assignable, and be a covenant

running with the land.

5. Description of Easement

Grantor hereby creates and grants a non-exclusive Roadway Easement for the purpose of ingress and egress, for the benefit of the owners of Grantees' property (the dominant tenement), over and across Grantor's property (the servient tenement) along the pre-existing roadway, commonly known as Microwave Hill Road, or otherwise described as the AT&T service road, and which easement is described as a 33 foot (2 rods) wide easement beginning at a point on the West boundary of Grantor's property, near the mid-section point, and continuing Easterly and Northeasterly to the East boundary of Grantor's property. Said easement is more particularly shown on that Certificate of Survey No. 169985, Folio 441-D, in the records of Clerk and Recorder's Office of Jefferson County, Montana.

6. Beneficial Interest

The Easement created and granted herein is for the benefit of the owner of the Grantee's above-described property.

7. Maintenance

No current nor subsequent Owner shall cause the placement of any structures or other physical improvements which unreasonably obstruct any portion of the said easement, inclusive of that portion of the road that crosses the dominant tenement, without the prior written consent of the other Owner. Grantor may, in its discretion, install cattle guards on any portion of the roadway and it is acknowledged that AT&T has maintenance rights as contained in prior recorded instruments. No gate may be installed on the easement without the consent of all users of the roadway. No use of the easement by any Owner may materially interfere with the use of the easement by the other Owner or the referenced holders of rights in the roadway. Grantee shall have no obligation for the maintenance of the easement so long as Grantee's property remains undeveloped or unimproved. Should the Grantee or a subsequent owner of Grantee's property erect or install a habitable dwelling on the Grantee property, that owner shall then be responsible for reasonable maintenance, grading, and graveling occasioned or required by that owner's use. It is anticipated by this provision that the regular use by such an owner of the Grantee's property will cause wear, erosion, rutting and washboards beyond that level of maintenance that currently occurs on the road. All maintenance activities shall be done in a good and workmanlike manner and conducted in a manner that does not materially interfere with use of Grantor's property. Grantee agrees to indemnify and hold harmless Grantor for any liens or liability that may arise from having such maintenance or improvement work done.

8. Enforcement

The Owners and their respective successors and assigns shall have the right to enforce, by proceedings at law or in equity, the covenants, restrictions and easements imposed by this Agreement, against any person or persons who have violated or who are attempting to violate any of the covenants or restrictions of this Agreement, to enjoin or prevent them from doing so,

The terms of the above-described easement are hereby acknowledged, approved and accepted by the Grantee, The State of Montana, State Board of Land Commissioners

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Director of the Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this _____ Day of November, A.D. 2006

Governor of the State of Montana

ATTEST:

Secretary of State

Counter-signed by:

**Director, Department of Natural Resources
& Conservation**

After Recording Return To:
Montana Department of Natural Resources
and Conservation
Attention: Lisa Axline
P.O. Box 201601
Helena, MT 59620-1601

GRANT OF ROADWAY ACCESS EASEMENT

WHEREAS Ash Grove Cement Company, a Delaware Corporation, is the owner of a parcel of land described as the East Half of Section 12, Township 9 North, Range 3 West, P.M.M., situated in Jefferson County, Montana (hereinafter referred to as the dominant tenement), excepting therefrom a 10 acre parcel owned by American Telephone & Telegraph; and

WHEREAS litigation has arisen between Ash Grove Cement and the State of Montana, by and through the Montana Board of Land Commissioners, and the Montana Department of Natural Resources and Conservation in the action styled Ash Grove Cement Company v. Jefferson County et. al., Cause No. DV-06-10516 (Mont. Fifth Judicial District Court, Jefferson County); and

WHEREAS the parties to the above-referenced lawsuit have agreed, in order to avoid needless litigation and to promote certainty in their relations, to resolve the same on the terms

and conditions set forth in that certain Settlement Agreement approved by the Court on **[DATE]**, the material terms of which are incorporated herein by this reference; and

WHEREAS the Settlement Agreement requires the Plaintiff, Ash Grove Cement Company, and the Defendant State of Montana, to grant reciprocal access easements to one another to allow access to their respective parcels, subject to the terms and conditions as described herein;

NOW THEREFORE in consideration of the mutual promises contained in the Settlement Agreement, and other good and valuable consideration, the State of Montana, State Board of Land Commissioners, as Grantor hereby grants to Ash Grove Cement Company as Grantee and its successors and assigns, and the Grantee hereby accepts, a non-exclusive access easement, for ingress and egress to the Grantee's above-described property, pursuant to the following terms and conditions, as set forth herein:

1. Parties

Ash Grove Cement Company, a corporation licensed and doing business in Montana, of 100 Montana Highway 518, Clancy, Montana, 59634, is hereinafter referred to as "the Grantee". The State of Montana, State Board of Land Commissioners, by and through the Department of Natural Resources and Conservation, of P.O. Box 201601, Helena, MT 59620-1601, is hereinafter referred to as "the Grantor".

2. Ownership of Servient and Dominant Tenements

The Grantor owns and has some right, title, and interest, both legal and equitable, in the real estate described generally as being the East ½ of the West ½ of Section 12, Township 9 North, Range 3 West, P.M.M., situate in Jefferson County, Montana, (hereinafter referred to as the "servient tenement"). The Grantee owns and has some right, title, and interest, both legal and equitable, in the dominant tenement, which is located within the East half of Section 12, Township 9 North, Range 3 West, P.M.M., to the East of Grantor's above-described property.

3. Purpose

The purpose of creating and granting the Roadway Easement described below is to permit the Grantee ingress and egress its property, and as limitation on the scope of this easement, the ingress and egress provided for herein shall be for all lawful purposes. The parties acknowledge this easement is given in conjunction with, and subject to, those existing and recorded grants of easement or right of way to American Telephone and Telegraph Company, in which Grantee's predecessor in interest and Grantor provided access to the AT&T tower site located in the Northeast ¼ of said Section 12. Nothing contained herein shall be construed as a limitation of the rights granted by the State in prior instruments.

4. Duration

The Easement created and granted herein shall be perpetual, assignable, and be a covenant running with the land.

5. Description of Easement

Grantor hereby creates and grants a non-exclusive Roadway Easement for the purpose of ingress and egress, for the benefit of the owners of Grantees' property (the dominant tenement), over and across Grantor's property (the servient tenement) along the pre-existing roadway, commonly known as Microwave Hill Road, or otherwise described as the AT&T service road, and which easement is described as a 33 foot (2 rods) wide easement beginning at a point on the West boundary of Grantor's property, and continuing Easterly and Northeasterly to the East boundary of Grantor's property. Said easement is more particularly shown on that Certificate of Survey No. 169985, Folio 441-D, in the records of Clerk and Recorder's Office of Jefferson County, Montana.

6. Beneficial Interest

The Easement created and granted herein is for the benefit of the owner of the Grantee's above-described property.

7. Maintenance

No current nor subsequent Owner shall cause the placement of any structures or other physical improvements which unreasonably obstruct any portion of the said easement, inclusive of that portion of the road that crosses the dominant tenement, without the prior written consent of the other Owner. Grantor may, in its discretion, install cattle guards on any portion of the roadway and it is acknowledged that AT&T has maintenance rights as contained in prior recorded instruments. No gate may be installed on the easement without the consent of all users of the roadway. No use of the easement by any Owner may materially interfere with the use of the easement by the other Owner or the referenced holders of rights in the roadway. Grantee shall have no obligation for the maintenance of the easement so long as Grantee's property remains undeveloped or unimproved. Should Grantee or a subsequent owner of Grantee's property erect or install a habitable dwelling or other occupied improvements upon the Grantee's property, that owner shall then be responsible for reasonable maintenance, grading, and graveling occasioned or required by that owner's use. It is anticipated by this provision that the regular use by such an owner will cause wear, erosion, rutting and washboards beyond that level of maintenance that currently occurs on the road. All maintenance activities shall be done in a good and workmanlike manner and conducted in a manner that does not materially interfere with use of Grantor's property. Grantee agrees to indemnify and hold harmless Grantor for any liens or liability that may arise from having such maintenance or improvement work done.

8. Enforcement

The Owners and their respective successors and assigns shall have the right to enforce, by proceedings at law or in equity, the covenants, restrictions and easements imposed by this Agreement, against any person or persons who have violated or who are attempting to violate any of the covenants or restrictions of this Agreement, to enjoin or prevent them from doing so, to cause the violations to be remedied, and/or to recover damages for any violations. Any Owner violating any of the covenants or restrictions of the Agreement shall also be liable for attorney's

fees to be fixed by the Court in favor of any party successfully bringing action based on such violation.

9. Easement for Conduct of Operations

Further, Grantor, in consideration of the promises and easements created herein, and the mutual benefit to be derived thereof, hereby conveys and grants to Grantee an easement, giving right to the Grantee to conduct on adjacent property owned by Grantee, its business of operating a cement plant, together with all necessary or desired activities conducted in furtherance of said business. Said easement for the use and benefit of the Grantee, its successors and assigns, shall include the encroachment of lawful noise, vibration, dust, fumes, smoke, vapor and other effects inherent in the lawful conduct of Grantee's business. As further condition to this easement, Grantor waives objection to and agrees to hold Grantee harmless for any noise, vibration, dust, smoke, vapor and other effects inherent in the Grantor's lawful conduct of said business operation. Grantor makes no representations concerning the present or future uses of Grantor's property.

10. Binding Affect and to Run With the Land

The Easement created and granted herein is granted for the benefit of the parties stated above, and their heirs, successors, or assigns. In addition, said Easement shall be binding upon the parties hereto, their heirs, successors or assigns, and shall run with the land during its term.

GRANTOR, STATE OF MONTANA

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Director of the Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this _____ Day of November, A.D. 2006

Governor of the State of Montana

ATTEST:

Secretary of State

Counter-signed by:

**Director, Department of Natural Resources
& Conservation**

The terms of the above-described easement are hereby acknowledged, approved and

accepted by the Grantee, Ash Grove Cement Company

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of _____)

This instrument was acknowledged before me by _____, as the
_____ of the Ash Grove Cement Company on _____.

Notary Public for the State of Montana
Residing at _____
My Commission expires _____